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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 3rd day of April 1998

Before

THE HON'BLE Mr. JUSTICE V.K.SINGHAL

WRIT PETITION NO.22697/91

Between

The Karnataka Bank Employees
Association, a registered trade union,
registered under the Indian Trade Union Act,
with its registered office at Dongerkerey,
Mangalore 675 993 and represented by its
General Secretary Shri P.R.Karanth .. Petitioner

(Sri B.L.Acharya, Advocate)

And:

1. The Commissioner for Income-tax,
Karnataka Circle,
Queens Road,
Bangalore-560 001.
2. The Secretary
Karnataka Bank Ltd.,
Staff Provident Fund
Karnataka Bank Building,
P.B.No.716,Mangalore-575 003 .. Respondents

(Sri H.Raghavendra Rao, Advocate)

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Writ Petition is filed praying to quash the order
of the 1st respondent dt.16.8.90-Amexure-A in No.
Asst.601/15/79-III etc.

This petition coming on for hearing today,
the Court made the following:

order

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O R D E R

The petitioner is aggrieved by the letter dated 16-8-1990 issued by the Commissioner of Income tax stating that investment in flats is not in consonance with Rule 68 and 69 of the Income Tax Rules.

2. Rule 68 of the Income Tax Rules has contemplated the circumstances by which withdrawals may be permitted by the trustees of the provident fund. One such circumstance is to meet the expenditure on building a house, or purchasing a site or a house or a house and a site.

3. According to the Commissioner of Income Tax the word 'building' would not cover the 'flat'.

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'Flat' has been defined in the Law Lexicon as under:-

" Flat. In the ordinary use of the term a flat is a self-contained set of rooms, structurally divided and separately owned or let from the rest of a building, which for the most part consists of other flats separated in like manner. Formerly a flat would commonly comprise an entire storey of floor, but the increased size of modern buildings has rendered this less usual. The word is one of popular use without any legal significance. The rule is to construe the word in the popular rather than in the technical legal sense and in accordance with the general object indicated by the context. "

The word "house" has been defined as under:-

" House a place of dwelling or habitation: also a family or household.

"A hundred years ago there was not much difficulty in saying what was a 'house', but builders and architects have so altered the construction of houses, and the habits of people have so altered in relation to them, that 'house' has acquired an artificial meaning and the word is no longer the expression of a simple idea. To ascertain

its meaning one must understand the subject matter with respect to which it is used in order to arrive at the sense in which it is employed in a statute" (per Halsbury, C., Grant V. Lanston, (1900) AC 390; 69 LJC 68). "Formerly houses were built so that each house occupied a separate site, but in modern times a practice has grown up of putting separate houses one above the other. They are built in separate flats or storeys; but for all legal and ordinary purposes they are separate houses. Each is separately let and separately occupied and has no connection with those above or below, except in so far as it may derive support from those below instead of from the ground, as in the case of ordinary houses" (per JESSEL, M.R., Yorkshire Insrce.V.Clayton, 8 QBD 424; 51 LJQB 84, cited with approval by Halsbury, C., and Ld. Brampton in Grant V Lanston, (1900) AC 390). "

The word "house" has been defined in 'words and phrases' as:-

"House" within constitutional protection from unreasonable searches and seizures, may include business office, store, hotel room, apartment, automobile or occupied

taxicab. Lanza V.State of N.Y., N.Y.,
82 S.Ct.1218, 1220, 370 U.S.139, 8 L.Ed.
2d 384.

A house is a structure intended or
used for human habitation, especially a
human habitation which is fixed in place
and is intended for the private occupation
of a family or families. Simmons V.State,
129 N.E 2d 121, 127, 234 Ind.489."

4. The words 'building' or 'flat' have not
been defined in the Income Tax Rules. The meaning
which is given in the common parlance has to be
ascertained. With the growth of civilization
and more particularly in recent years in the cities
instead of constructing independent building to
be used a house the concept of multistoried flat
has been developed. The structure intended for
human habitation having its place and intended
for the occupation of a family has been defined
as a 'house'. This purpose is achieved by an
independent house as well as flat. The vertical
growth lead to multistoried construction of
buildings where independent flats are constructed

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for human habitation. It may be one ~~flat~~ or one storey or number of flats in a storey. Flat could be covered by the word 'house' and therefore the interpretation which the Commissioner of Income Tax has taken could not adhere to be in accordance with the rules.

Accordingly, the letter dtd.16-8-1990 is quashed and writ petition is allowed.

Sd/-
JUDGE

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